STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN TRANSMISSION COMPANY OF ILLINOIS	))) Docket No. 14-0291
Petition for an Order Pursuant to Section 8-509 of the Public Utilities Act Authorizing Use of Eminent Domain Power.	)))

Ameren Transmission Company of Illinois'
Reply in Support of Its Motion for a Protective Order

Ameren Transmission Company of Illinois (ATXI) hereby replies to the Response of the Webel Family[1] to ATXI's Motion for a Protective Order (Response). The Response does not propose any specific changes to the Protective Order, and it is unclear what, if any, specific relief the Webel Family seeks. Nevertheless, the Response appears to suggest that the Webel Family should be entitled to freely disclose confidential information obtained in this proceeding to "neighbors" and "meetings of landowners." Such a request is so wholly contrary to the purpose of this (or any) Protective Order, and also contrary to the best interest of customers who will pay for the costs of the Project, that it must be rejected.

The Webel Family's requested relief is too vague to be granted.

The Webel Family's Response does not propose any changes to the language of the Protective Order. Instead, the Webel Family asks vaguely that "confidentiality be limited" and that the Webel Family and other intervenors be allowed to "continue to discuss and gather information for the purposes of negotiating with ATXI." (Resp. at 2.) But what this means is not explained. The Webel Family does not define how "confidentiality [is to] be limited." Likewise, what "information" they wish to discuss or gather is not defined either. Is this

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[1] For avoidance of doubt, ATXI is only seeking eminent domain authority over the tract designated as ILRP_QM_PI_024, the primary Owner of which is Webel Farms II, LLC.

intended to be information on amounts of offers of compensation? On easement language or pole locations? The phone numbers and emails of the other Unsigned Landowners? Information for just the Webel Family, or for all Unsigned Landowners in this case? None of this is explained. As a result, the relief requested is too vague to be considered. *See, e.g. Schlenz v. Castle*, 115 Ill. 2d 135, 144 (1986) (remanding for dismissal because the "relief requested is so vague as to be meaningless").

The broad sharing of negotiation information the Webel Family seeks to engage in is exactly what the Protective Order is intended to protect against; allowing any "limitation" would undermine the purpose of the Protective Order.

The Webel Family complains that under the Protective Order's language they would be precluded from "discussing the terms of *any* proposed settlement with neighbors and interested parties" or "attending meetings of landowners and freely and openly discussing the terms of *any* proposed settlement." (Resp. at ¶ 3 (emphasis added).) Again, it is not clear what settlement terms the Webel Family wants to be able to discuss. But by referring to "any" settlement, it appears the Webel Family contemplates utilizing confidential information obtained not just from their own negotiations with ATXI, but from each of the 25 Unsigned Landowners in this case, and (whether those 25 landowners want them to or not) reserving the option to freely distribute that confidential information among neighbors, "other interested parties" and at "meetings of landowners." (Resp. at ¶ 3.) But the dissemination of confidential information, and particularly the material settlement terms of other landowners, "freely and openly" is exactly what the Protective Order is intended to protect against. Limiting the scope of the Protective Order as suggested by the Webel Family would undermine its very purpose.

The purpose of the Protective Order is to allow the production of confidential information within the context of the Commission proceeding. In these types of eminent domain cases, as the

Commission has recognized in approving similar protective orders in Dockets 13-0456 and 13-0516, the material terms of easement negotiations are particularly sensitive. Maintaining the confidentiality of this type of information is necessary not just for ATXI's benefit (to preserve ATXI's negotiating position), but to allow ATXI to acquire land rights at the lowest cost and most advantageous service terms, an outcome which is in the best interest of customers. For that reason, the Protective Order has added protections for information designated as "Confidential – Contains Terms of Negotiations" – most importantly, that no party shall disclose information designated "Confidential – Contains Terms of Negotiations" to "any person or entity…unless that person or entity *is a party to the subject negotiation*." (Protective Order at ¶ 4 (emphasis added).)[2] These additional protections also recognize that a case like this one will necessarily compile confidential information about many landowners in one place—and, as such, these cases represent a trove of data that could be utilized by anyone with access to confidential information (by signing Form 1) to gain an unfair advantage in the negotiating process.

The landowner negotiations are intended to be a direct, arms-length negotiation between ATXI and the landowners. As was explained in filings in Docket 13-0456, information related to individual landowner negotiations, such as offers, counter-offers, price, and proposed easement agreement language changes reflect material terms of the landowner-specific negotiations. *See* Ameren Illinois Company's Memorandum Per the ALJ's September 3, 2013 Ruling, Docket 13-0456 (September 3, 2013). The gathering of information from this case and

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[2] The Webel Family states that "it appears" that the Protective Order would prohibit an intervenor from discussing the terms of settlement negotiations with anyone who has not signed Form 1. (Webel Resp. at ¶ 3.) In fact, the terms of settlement negotiations would likely be designated as "Confidential – Contains Terms of Negotiations" under the Protective Order and so their disclosure would be limited to parties to the negotiation. The Webel Family's Response does not, however, identify any concerns with the requirements for information designated as "Confidential – Contains Terms of Negotiations."

disclosure to neighbors and other groups as proposed by the Webel Family would allow

landowners who are not a party to a negotiation to obtain information about the status and terms

of such other negotiations. Although perhaps not the Webel Family's intent, this would give

such landowners an unfair advantage in the negotiation process.

For example, concessions made by ATXI, including the degree of those concessions, do

not necessarily represent ATXI's preference or its negotiating position. Nor does the fact that

ATXI has been willing to make certain concessions during negotiations with one particular

landowner under one particular set of circumstances mean ATXI can or will be able to make the

same or similar concession with another landowner in current or future negotiations. ATXI, for

example, prefers its standard easement language on telecommunications. Disclosure of a

concession (if any) on this subject will provide all current and future negotiating landowners the

unprecedented benefit of knowing what ATXI is perhaps willing to concede. In short, ATXI's

willingness to compromise in one circumstance could, by making that willingness public, cause

other parties to request the same change, and so in turn cause one limited concession to become

the default.

ATXI's land acquisition negotiations remain ongoing, both in the transmission line

segments at issue here and throughout the Illinois Rivers Project. Disclosure of negotiation

information would adversely affect ATXI's ability to negotiate for land rights with other

landowners, by giving them insight into ATXI's bargaining position, including concessions

made or refused, with other similarly situated landowners and so providing them with an unfair

advantage during negotiations. The Webel Family's proposal to gather and share information

would be contrary to the interests of ATXI, other Unsigned Property owners, and customers, and

to very the purpose of the Protective Order.

Revising or limiting the language of Paragraph 10 of the Protective Order would render the definition of "Confidential," and so the entire Protective Order, meaningless.

As discussed, the Webel Family does not propose any specific changes to the Protective Order. The Webel Family's Response, however, focuses on the language in Paragraph 10 of the Protective Order that "neither information that is produced and designated as 'Confidential' *nor any information contained therein or obtained there from* shall be delivered, exhibited or disclosed to any person." To the extent the Webel Family is seeking changes to that language, any such changes must be rejected. If information "contained in" or "obtained from" information designated confidential could be disseminated, the confidentiality designation would be meaningless, because essentially anything in a confidential document could be disclosed. If anything in a confidential document could be disclosed, the Protective Order would be meaningless. Such an absurd result should not be considered.

Dated: April 23, 2014

Respectfully submitted,

Ameren Transmission Company of Illinois

/s/ Albert D. Sturtevant

One of its Attorneys

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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on April 23, 2014, I caused a copy of the foregoing Ameren Transmission Company of Illinois' Response in Support of Its Motion for Protective Order to be served by electronic mail to the individuals on the Commission's Service List for Docket 14-0291.

/s/ Albert D. Sturtevant
Attorney for Ameren Transmission Company of Illinois